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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,863	04/12/2001	Tomoyuki Funaki	5259-000001	5194
27572	7590	02/24/2006	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			HANNE, SARA M	
			ART UNIT	PAPER NUMBER
			2179	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/833,863

Applicant(s)

FUNAKI, TOMOYUKI

Examiner

Sara M. Hanne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) 6, 12 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 11, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. This action is responsive to the election received on November 30, 2005.

Claims 1-5, 10-11, 14-15 have been elected.

2. Applicant's election without traverse of Group 1 in the reply filed on November 30, 2005 is acknowledged.

This application contains claim 6, 12 and 16 are drawn to an invention nonelected. A complete reply must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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5. Claims 1-5, 10-11 and 14-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Eyzaguirre et al., US Patent 6353170.

As in Claims 1, 10 and 14, Eyzaguirre et al. teaches a performance information edit and playback apparatus, method and machine-readable medium comprising a storage for storing style data, each of which includes constituent parts regarding accompaniment and for storing user's performance data including performing parts wherein each of the constituent parts and the performing parts contains a series of musical tone event data arranged in time series ("Music samples are independent pieces of music composed by a musician and stored in memory ... each sample is one measure long.", Column 4, lines 36-38), and the user's performance data are created by a user: a first display section for displaying contents of the performing parts included in the user's performance data in a time-series manner (Instrument row 730), a style selector for selecting a desired style data from among the style data in accordance with a user's instructions (Column 4, line 25 et seq.) and a second display section for displaying blocks designating the constituent parts included in the selected style data (sample selector 720), and a controller for allowing one of the blocks which is selected by the user's instruction and is displayed in the second display section to move to a desired time-related position within a desired performing part displayed in the first display section (Column 4, lines 52-56), thus writing a series of the musical tone event data included in the constituent part designated by the block that is selected, to the desired time-related position in the desired performing part (Figure 7 and corresponding text).

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As in Claim 2, Eyzaguirre et al. teaches a pitch modifier for automatically modifying tone pitches of the selected constituent part of the style data (harmonizer program 310).

As in Claim 3, Eyzaguirre et al. teaches the first display section displays the content of the performing part included in the user's performance data as the block (Figure 7).

As in Claims 4, 11 and 15, Eyzaguirre et al. teaches a performance information edit and playback apparatus, method and machine-readable medium comprising: a storage for storing style data including prescribed accompaniment parts and for storing user's performance data including accompaniment parts and other performing parts (Figure 7), not related to the accompaniment (one line of the composition may be the melody), wherein the style data are fixed and are not rewritten (harmonizer program not activated), and the user's performance data are created by a user, a selector for selecting the user's performance data in accordance with a user's instruction (Column 4, lines 25-56), and a playback device operable to play back the accompaniment parts included in the style data and other performing parts included in the user's performance data in parallel when the selector selects the style data, and the accompaniment parts included in the user's performance data and the other performing parts included in the user's performance data in parallel when the selector selects the user's performance data (Figure 7, ref. 750 and Col. 4, line 67- Col. 5, line 6).

As in Claims 5, Eyzaguirre et al. teaches both of the accompaniment parts included in the user's performance data and the prescribed accompaniment parts

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included in the style data commonly share a same tone-generation channel or a same tone color (Col. 5, line 14 et seq.).

### ***Response to Amendment***

Applicant's arguments filed 11/30/05 have been fully considered but they are not persuasive. The diagrams noted by the applicant in the remarks have not been received by the office and therefore have not been considered.

In response to the applicant's arguments that Eyzaguirre fails to teach displaying a plurality of constituent parts regarding accompaniment, which are included in the style data selected by the style selector in units of blocks, the examiner disagrees. Eyzaguirre teaches "sample selector 720 allows the user to choose a sample in a certain style and apply it to the music by clicking and dropping in the desired place in the work" (Col. 4, line 32 et seq.). Individual constituent parts may be selected in this manner as accompaniment to the other performance data, thereby selecting the corresponding style.

In response to the applicant's request that the Examiner note that the recited selector and playback devices are different, the examiner disagrees. The claims do not support separate devices. The examiner recognizes that the selector responds to selection of data, and that the playback device produces what has been created by the selector in parallel as written in the claims.

The arguments regarding Claims 6, 9, 12 and 16 on page 15 of the remarks have not been considered seeing as Claims 6, 12 and 16 are nonelected and Claim 9 has been cancelled.

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***Conclusion***

The prior art made of record on form PTO-892 and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 C.F.R. § 1.111(c) to consider these references fully when responding to this action. The documents cited therein teach similar musical interfaces.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara M. Hanne whose telephone number is (571) 272-4135. The examiner can normally be reached on M-F 7:30am-4:00pm, off on alternating Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WEILUN LO can be reached on (571) 272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

smh

BA HUYNH  
PRIMARY EXAMINER